TIONG ING CHIONG v. GIOVANNI VINNETI

[A.C.J. (Garcia J.) December 8, 1982]
[Bandar Seri Begawan – Civil Appeal No. 9 of 1981]

Jurisdiction – Applications for leave to appeal to Privy Council – Amendment to the Order in Council 1951 – "Court" means "Court of Appeal of Brunei" – Effect of – High Court can hear applications for leave to appeal to Privy Council – High Court may order that execution of judgment of Court of Appeal be stayed generally until hearing of counsel's further application by Court of Appeal – Order in Council 1951, clauses 5 to 7 – Brunei (Appeal Council) Order in Council 1963.

Practice & Procedure – Application for leave to appeal to Privy Council – Jurisdiction – Whether High Court has jurisdiction to hear – Order in Council 1951, clauses 5 to 7 – Brunei (Appeal to Privy Council) Order in Council 1963.

These were applications for leave to appeal to the Privy Council made under the Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council 1951. The Order in Council has been amended by the Brunei (Appeal to Privy Council) Order in Council 1963 to provide so far as the State of Brunei is concerned that the definition of "Court" means "Court of Appeal of Brunei".

Held: (1) despite the said amendment to the Order in Council 1951, under Clause 6 of the 1951 Order in Council the present court has jurisdiction and power to hear applications for leave to appeal to the Privy Council and to determine those applications. Leave would therefore be granted to both the appellant and to the respondent to appeal under Clause 5 of the 1951 Order in Council on the conditions set out first of all in 5(a) and with regard to 5(b), the appellant and the respondent were to take all the necessary steps for the purposes of procuring the preparation of the records and the despatch thereof to England within a period of 6 months from date of judgment;

(2) the present court is not precluded by the Rules of the Supreme Court nor by inherent jurisdiction of the court when adjourning this matter to the Court of Appeal from considering and allowing execution of the judgment of the Court of Appeal to be stayed generally until the hearing of counsel's further application by the Court of Appeal.

CIVIL APPEAL.

Sarjeet Singh for the appellant.
T.C. Chan for the respondent.

Cur. Adv. Vult.

Garcia J.: These are applications for leave to appeal to the Privy Council made under the Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council 1951. The Order in Council has been amended by the Brunei (Appeal to Privy Council) Order in Council 1963 to provide so far as the State of Brunei is concerned that the definition of "Court" means "Court of Appeal of Brunei." Despite that amendment to the Order in Council 1951 it has been submitted to me that under clause 6 of the 1951 Order in Council I have jurisdiction and power to hear applications for leave to appeal to the Privy Council and to determine those applications. I think the interpretation of that particular clause is correct and accordingly I grant leave to both the appellant and to the respondent to appeal under Clause 5, 1951 Order in Council, on the conditions set out first of all in 5(a) and with regard to 5(b) I make this order: the appellant and the respondent to take all the necessary steps for the purposes of procuring the preparation of the records and the despatch thereof to England within a period of 6 months from today.

Mr. Singh has asked that a portion of the judgment, i.e. with regard to damages which have been awarded by the Court of Appeal to the respondent be stayed but again it has been pointed out to me by Mr. Chan that under clause 7 of the Order in Council of 1951 only the Court of Appeal has power to hear an application for stay and to determine whether an order to stay of execution be made or not.

I agree with the interpretation of that particular clause because of the amendment to the definition of "Court" in the 1963 Order in Council and that therefore precludes me from entertaining the application made by Mr. Singh for the stay of execution of part of the judgment pending the hearing of the appeal by the Privy Council. However, I think I am not precluded by the Rules of the Supreme Court nor by inherent jurisdiction of the Court when adjourning this matter to the Court of Appeal, to consider and to allow a stay of execution of the judgment of the Court of Appeal. I would therefore remit this further application to the Court of Appeal at its next sitting. In the mean time, I make an order that the execution of the Judgment of the Court of Appeal be stayed generally until the hearing of Mr. Singh's further application by the Court of Appeal.

Order accordingly.

Solicitors: *Choo Chan & Wong; Tan Jin Hwee & Co.*